EDITOR'S NOTE

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IN THE UNITED STATES SUPREME COURT

91- 1579

RAYMOND R. MOURADIAN, PETITIONER

v.

THE JOHN HANCOCK COMPANIES, et al, RESPONDENTS

MOTION BY THE PETITIONER TO PROCEED UPON TYPEWRITTEN PAGES PURSUANT TO S.ct. RULES 34.1 AND 40.1

RECEIVED
JAN 14 1992
OFFICE OF THE CLERK
SUPREME COURT, U.S.

David H. Souter, Associate Justice
United States Supreme Court
Washington, D.C.20543

Dear Justice Souter:

1. The Petitioner, Raymond R. Mouradian submits this motion for your review and approval so that I can proceed as a veteran upon typewritten pages pursuant to S.ct. Rules 34.1 and 40.1 and under the jurisdiction of the Veterans Re-employment Rights Act, 38 U.S.C. § 2022, The National Labor Relations Act, 29 U.S.C. § 160(b) and The Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. Appx. § 525 (SSCRA).

2. The U.S. District Court and the U.S. Court of Appeals for the First Circuit has already established my status as a veteran in the decisions of both courts in Raymond R. Mouradian v. The John Hancock Companies, et al., 751 F.Supp 272 (MA 1990),

930 F.2d [illegible] (1st Cir.). Both the District Court and the Court of Appeals decided that the National Labor Relations Act, Section (10b), amended as 29 U.S.C. § 160(b) and the Soldiers and Sailors Civil Relief Act, applied to me and that Section 160(b) provision regarding veterans demonstrate that he was prevented from filing a timely complaint also applied to me.

3. These two statutes are the heart of my request for certiorari and since both the District Court and the Appeals Court decided that the National Labor Relations Act preempts any and all statutes related to this case 29 U.S.C. § 160(b) must preempt 38 U.S.C. § 2022 and qualify me to proceed under Rules 34 and 40.1.

4. If the respondents complied with the terms of the Collective Bargaining Agreement (CBA) and the intent of the National Labor Relations Act (NLRA) to submit labor disputes to arbitration, all of the current and previous litigation would have been unnecessary. The respondents violated the C.B.A. when they refused to submit my grievance to arbitration fourteen (14) months after termination. The U.S. Magistrate refused to extend the six month statute of limitations under N.L.R.A. even though I was on active duty for fifteen days (15) during the limitations period and spent two (2) days each month with my reserve unit in that same six months. The District Court also refused to extend the limitation period under N.L.R.A. On appeal to the U.S. Court of Appeals (The First panel) in their decision of May 26, 1989, the court decided that if SSCRA applied to me my suit would be timely. Upon remand, the District

Judge again decided that he would not extend the limitation period even though I was entitled to the protection of SSCRA, (decision dated July 30, 1990). Once again, on appeal to the Court of Appeals (new panel) they agreed with the District Court to deny me the provisions of SSCRA, (decision dated April 25, 1991). The last decision of the Appeals Court made no mention of the findings of the first decision made on May 26, 1989. These three decisions can be found in the rear of the enclosed Petition for Certiorari.

5. An honest review of the record clearly shows that I was denied the equal protection of the law and due process guaranteed by the fourteenth amendment.

6. A careful examination of Supreme Court Rule 40.1 shows how a law or rule made with good intentions, can as in this instance be made to recognize the sacrifice and services of veterans of the Armed Forces, while its real effect is to discriminate against the vast majority of other veterans in the same group or category. S.ct. Rule 40 discriminates by giving preference to perhaps one percent of those it seeks to recognize for their service and sacrifices, yet it discriminates against the other ninety-nine percent whose service and sacrifice are equally as important in the defense of our Constitution and violates most sections of the Civil Rights Act of 1964. Rule 40 should be revised to include all veterans in recognition of their service to the nation.

7. The petitioner prays that the court will accept the foregoing in the light that it was made, as a plea for fairness

and the equal and just application of the U.S. Constitution, the legislated laws of Congress and states law and states rights.

Thank you for your time and consideration in this matter.

Very truly yours,

Raymond R. Mouradian

Raymond R. Mouradian
Petitioner-Pro Se

Dated: January 9, 1992

AFFIDAVIT OF RAYMOND R. MOURADIAN

[illegible] v. The John Hancock Companies, et al.
[illegible] (Ma 1990), 930 F. 2d 972 (1st cir.).

I hereby swear and affirm that the list and dates of service below in the U.S. Navy and the U.S. Naval Reserve are true and factual with the period of service indicating service rounded off to the nearest month.

U.S. Navy (active) Enlisted September 1955 - September 1958
U.S. Naval Reserve October 1958 - October 1960
U.S. Naval Air Reserve NAS SO. Weymouth, Ma November 1960 - September 1968
U.S. Naval Reserve (Surface) October 1968 - May 1974
U.S. Naval Reserve Construction Battalion Twelve (RNMCB-12) June 1974 - May 1 1989, Retired, Transfered to the Fleet Reserve subject to Recall.

Total Service - 33 years, 7 Months - 17 days

Raymond R. Mouradian

Raymond R. Mouradian, Pro Se
Appellant-Petitioner
31 Atkinson Drive
Bridgewater, Ma 02324
(508) 697-7528

13 [illegible] Insert N/A in the items below which are not applica

PERSONAL DATA

1. NAME (LAST, FIRST, MIDDLE INITIAL)	2. SERVICE NUMBER	3a. GRADE, RATE OR RANK	b. DATE OF RANK (Day, Month, Year)
MOURADIAN, Raymond Richard	902 26 63	SK3	16 JUN 57

4. DEPARTMENT, COMPONENT AND BRANCH OF SERVICE	5. PLACE OF BIRTH (City and State or Country)	6. DATE OF BIRTH DAY	MONTH	YEAR
NAVY USN	BRIDGEWATER, MASSACHUSETTS	29	OCT	37

7a. RACE	b. SEX	c. COLOR HAIR	d. COLOR EYES	e. HEIGHT	f. WEIGHT	8. U.S. CITIZEN	9. MARITAL STATUS
CAUCASIAN	MALE	BROWN	HAZEL	70"	155	☒ YES ☐ NO	SINGLE

10. HIGHEST CIVILIAN EDUCATION LEVEL (CIRCLE)	11. MAJOR COURSE OR FIELD
ELEM High School 4	GENERAL

TRANSFER OR DISCHARGE DATA

12a. TYPE OF TRANSFER OR DISCHARGE	b. STATION OR INSTALLATION AT WHICH EFFECTED
TRANSFERRED TO RESERVES	US NAS, QUONSET POINT, RHODE ISLAND

c. REASON AND AUTHORITY	d. EFFECTIVE DATE	DAY	MONTH	YEAR
Expiration of term of active obligated service BuPers Inst 1910.12B BPM: Art C-10317 CODE 203		10	SEP	58

13. LAST DUTY ASSIGNMENT AND MAJOR COMMAND	13a. CHARACTER OF SERVICE	b. TYPE OF CERTIFICATE ISSUED
USS INVESTIGATOR (YAGR-9)	HONORABLE	DD217N

SELECTIVE SERVICE DATA

14. SELECTIVE SERVICE NUMBER	15. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY AND STATE	16. DATE INDUCTED DAY	MONTH	YEAR
N/A	NOT REGISTERED	- -	- - -	- -

17. DISTRICT OR AREA COMMAND TO WHICH RESERVIST TRANSFERRED

Commandant FIRST Naval District

SERVICE DATA

18. TERMINAL DATE OF RESERVE OBLIGATION DAY	MONTH	YEAR	19. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION a. SOURCE OF ENTRY	b. TERM OF SERVICE (Years)	c. DATE OF ENTRY DAY	MONTH	YEAR
12	SEP	61	☒ ENLISTED (First Enlistment) ☐ ENLISTED (Prior Service) ☐ REENLISTED ☐ OTHER:	MINORITY	13	SEP	55

20. PRIOR REGULAR ENLISTMENTS	21. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SERVICE	22. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State)
NONE	SR	BOSTON, MASSACHUSETTS

23. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County and State)

27 Hale St.,
Bridgewater, Plymouth, Massachusetts

24a. SPECIALTY NUMBER AND TITLE	b. RELATED CIVILIAN OCCUPATION AND D. O. T. NUMBER
0000	N/A

24. STATEMENT OF SERVICE		YEARS	MONTHS	DAYS
a. CREDITABLE FOR BASIC PAY PURPOSES	(1) NET SERVICE THIS PERIOD	02	11	28
	(2) OTHER SERVICE	00	00	00
	(3) TOTAL (Line (1) + line (2))	02	11	28
b. TOTAL ACTIVE SERVICE		02	11	28
c. FOREIGN AND/OR SEA SERVICE		02	02	24

25. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED

NONE

27. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date, if known)

NONE

28. SERVICE SCHOOLS OR COLLEGES, COLLEGE TRAINING, COURSES AND/OR POST-GRADUATE COURSES SUCCESSFULLY COMPLETED

SCHOOL OR COURSE a	DATES (From - To) b	MAJOR COURSES c
SK"A"	5 MAR 56 25 MAY 56	N/A

29. OTHER SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED

SN, SK3, SK2
GTC FOR PO'S

VA DATA

30a. GOVERNMENT LIFE INSURANCE IN FORCE	b. AMOUNT OF ALLOTMENT	c. MONTH ALLOTMENT DISCONTINUED
☐ YES ☒ NO	N/A	N/A

31a. VA BENEFITS PREVIOUSLY APPLIED FOR (Specify type)	b. VA CLAIM NUMBER
NONE	C- N/A

AUTHENTICATION

32. REMARKS

RECOMMENDED FOR REENLISTMENT NOT ENTITLED TO MOP

33. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County and State)	34. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED
27 Hale St., Bridgewater, Plymouth, Mass.	Raymond Richard Mouradian

35a. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER	b. SIGNATURE OF OFFICER AUTHORIZED TO SIGN
J. E. GREEN, LT., USN ASST PERS OFF BY DIR OF THE C.O.	J E Green

DD FORM NOV 52 214 REPLACES EDITION OF 1 JUL 52 WHICH IS OBSOLETE

ARMED FORCES OF THE UNITED STATES
REPORT OF TRANSFER OR DISCHARGE

QUESTIONS PRESENTED

1. Did the District Court and the Court of Appeals for the First Circuit exceed their judicial discretion and erroneously and improperly apply the wrong statute of limitations based on the guide-lines established in DelCostello v. International Teamsters Union, 462 U.S. 151, (1983), which adopted the tolling profound under 29 U.S.C. s 160(b) of the National Labor Relations ACT (NLRA)?

2. Can a Federal Court of Appeals and a U.S. District Court ignore the clear, concise and mandatory application of the tolling provisions legislated by the U.S. Congress found in the Soldiers and Sailors Civil Relief Act, 50 U.S.C. Appx s 525 and apply the judicially established tolling provisions of 29 U.S.C. s 160(b) of the NLRA in apparent violation of Article I, Section 1 of the United States Constitution?

3. Can a Judge(s) or an officer(s) of the Court(s) be held legally liable, in their individual capacity and not their official capacity, for judgements found to be prejudicial, discriminatory and rendered with malice under the Civil Rights Act of 1964, 42 U.S.C. s 1983?

LIST OF PARTIES

Raymond R. Mouradian, Petitioner

The John Hancock Companies, et al, Respondents

The John Hancock Mutual Life Insurance Company, Respondent

The following officers and employees of The John Hancock Mutual

Life Insurance Company
John McElwee, Respondent
E. James Morton, Respondent
Neal F. Smith, Respondent
Bernard Panos, Respondent
Robert Allison, Respondent
Robert N. Tarlov, Respondent
Ronald Pellechia, Respondent
Gerald Hurwitch, Respondent
R. Bruce Oliver, Respondent

The Sentry Insurance Company, Respondent

The Middlesex Insurance Company, Respondent

Frank Ballard, Sentry Insurance Co. CEO, Respondent

The United Food & Commercial Workers International Union,AFL-CIO, Respondent

William H. Wynn, President United Food & Commercial Workers International Union, Respondent

Andre I. Henault, Associate Director, United Food & Commercial Workers International Union, Respondent

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

RAYMOND R. MOURADIAN, Petitioner,

v.

THE JOHN HANCOCK COMPANIES, et al, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The petitioner, Raymond R. Mouradian respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the First Circuit, entered in the above-entitled proceeding on April 25, 1991.

OPINIONS BELOW

The second opinion of the Court of Appeals for the First Circuit is reported at 930 F.2d 972 and is reproduced in the appendix hereto, p.1a, infra.

The second memorandum decision of the United States District Court for the District of Massachusetts is reported at 751 F.SUPP 272, and is reproduced in the appendix hereto p. 1b, infra.

The first memorandum decision of the United States District Court for the District of Massachusetts, dated August 30, 1988 was not originally reported but is now incorporated with the second memorandum decision supra, and reported with 751 F.SUPP 272.

The First opinion of the Court of Appeals for the First Circuit, dated May 30, 1989 and not reported is reproduced in the appendix hereto, p. 1c, infra.

JURISDICTION

Petitioner, citing several Massachusetts statutes brought suit in state court alleging wrongful termination by his employer and breach of duty of fair representation by his former union. Respondents posted a $500 Bond and had suit removed to Federal Court under 28 U.S.C.S. s 1441 (actions removable). Federal jurisdiction was obtained under Labor Management Relations Act s 301 amended as 29 U.S.C.A. s 185 on grounds that complaint alleged violation of a Collective Bargaining Agreement which evidenced interstate commerce.

STATUTE INVOLVED

28 U.S.C. s 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the Disrrict of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

STATEMENT OF THE CASE

Petitioner, Raymond R. Mouradian (Mouradian) filed a thirteen count complaint, Pro Se, on July 14, 1986, alleging that the Respondents, (John Hancock) Companies violated specific State and Federal Laws and The Collective Bargaining Agreement (C.B.A.) and that his Union (U.F.C.W.) also violated their duty of fair representation.

REASONS FOR GRANTING THE WRIT

Respondents moved for a summary judgement on April 9, 1987 and on June 30, 1987, U.S. Magistrate granted summary judgement to respondents that suit was time barred under National Labor Relations Act (N.L.R.A.) 29 U.S.C. s 160(b) denying Petitioner tolling provision of s 160(b) to extend the statute of limitations by the twenty seven days during the limitations period Petitioner served in the Naval Reserve on Active Duty Training.

Petitioner appealed to the U.S. District Court July 1987, and on August 30, 1988 District Court again denied extending the limitations period by 27 days on the grounds that Petitioner was not "Prevented" by reason of his active duty from filing timely suit.

The Petitioner then appealed to the Court of Appeals for the First Circuit on October 4, 1988 citing fourteen (14) separate reasons the District Court and the Magistrate's arguments should be reversed. Those reasons included adopting the limitations period of Massachusetts General Law (M.G.L.) 150C s 1, Collective Bargaining Agreements to arbitrate held in Derwin v. General Dynamics Corp. (D.C. 1982) 551 F.Supp 1198, affirmed 719 F.2d 484. In this s 301 suit the District Court and the Appeals Court decided M.G.L. 150C provided state law as controlling "Hybrid" suit with limitation period as provided in the Federal Arbitration Act (F.A.A. 9 U.S.C. s 9). This is the argument Petitioner has argued repeatedly. DelCostello v. International Teamsters Union, 462 U.S. 151 (1983) abandoned the long established precedent of adopting analogous state laws and statute of limitations and substituted the limitation period in National Labor Relations Act

[illegible] Court should have adopted the F.A.A. as in Dennis which provided a fairer and equitable limitations period as provided to commercial disputes, see Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth Inc., 105 S.ct. 3346.

The First Circuit Court of Appeals agreed to hear appeal and on May 26, 1989 reversed and remanded on the grounds that the Soldiers and Sailors Civil Relief Act of 1940 s 205 amended as 50 U.S.C. Appx s 525, if found applicable to Petitioner, argument is "so compelling as to virtually insure appellant's success" P.3c, Appendix (not published). On P.4c, Appeals Court, "we note that it seems clear that were Plaintiff a member of a regular military unit, he would be protected by the act", (SSCRA). The Court quoted Stephan v. United States, 290 F.Supp 323, 325, Bowles v. Dixie Cab Assn. 111 F.Supp 324, 325, Bickford v. United States, 656 F.2d. 636, Ricard v. Birch, 529 F.2d 214 (4th cir. 1975), Lester v. United States, 487 F.Supp 1033. For the court not to have applied SSCRA would be in violation of the Fourteenth Amendment, section 1, which guarantees that "nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law".

Upon remand back to the District Court, the Appellant and Appellees submitted brief's as to the applicability of SSCRA. The Appellees could offer no legislated act, order, regulation or resolution of congress to support their arguments why s 160(b) of N.H P.A. should preempt the tolling provisions of SSCRA s 525.

Every [illegible] petitioner's arguments have been supported by the legislated laws of the Congress, The U.S. Constitution, Article I, section 1, 8, 9, 10, Article III, section 1, Amendment X, Amendment XIV, section 1, Public Law 99-290 and Massachusetts General Law 150C.

On July 30, 1990 see Appendix P.3b, the District Court again granted summary judgement for appellees citing again that Plaintiff's reserve service did not prevent the filing of a timely law suit. The court choose to ignore the explicit, mandatory language of SSCRA s 525 and admitted to fact petitioner was entitled to the application of the tolling provisions of the act. The limitations period in question provides six months to filing suit (183 days). The petitioner spent 27 days in military service during relevant period which provided petitioner only 156 days to file, not 183. The District Court argues that Petitioner was "not prejudiced" by his military service but suit was only 5 days late and extending limitations period provided by s 525 makes suit timely.

SSCRA also provides that the period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission or department, or other agency of government by or against any person in the military service. Both the District Court and the Appeals Court have violated the law and abused their judicial discretion. The law also forbids bias and prejudice by or against any person in the military service. Petitioner believes that the District

That the U.S. Court of Appeals are biased and prejudiced against Petitioner in favor of Respondents. On April 25, 1991, P.1a Appendix, infra. Court of Appeals reversed their finding of May 26, 1989, and affirmed District Court's decision. It is Petitioner's view that District Court and Court of Appeals are individually liable for violation of Civil Rights Act of 1964, 42 U.S.C. 1983 by denying Mouradian protection of the SSCRA.

The U.S. Court of Appeals, The District Court and The U.S. Magistrate ruled that the Petitioner was not materially affected by reason of his military service, SSCRA s 521. Yet civilians who have a claim against servicemen, do not have to prove that they were materially affected by the serviceman's military service, see Ricard v. Birch, 529 F.2d. 217, Blasejowski v. Stadnicki, 86 N.E. 2d. 164 (Mass. 1947). SSCRA s 521 denies members of the military The Equal Protection of the Law and is probably unconstitutional.

It has been a well settled precedent that the courts have looked to State Laws as Rules of Decision (Act), 28 U.S.C. s 1652 to establish the correct statute of limitations when Congress did not provide one. There is no reason why the court's are "prevented" from returning to Congress any legislation in which it is unclear what the "intent" of Congress was on a specific piece of legislation so as not to "distort" the balanced interests of states rights under federal law and preserve the "interstices" of the interests found in the several states and the federal government, between a strong national defense and the desire for "repose" in national labor relations.

CONCLUSION

For the reasons set forth above, the Petitioner, Raymond R. Mouradian, respectfully submits that his claim should not be time-barred and that the decisions of the U.S. Magistrate, the U.S. District Court and the U.S. Court of Appeals should be reversed.

Respectfully submitted,

Raymond R. Mouradian

Raymond R. Mouradian, Pro Se
Petitioner-Appellant
31 Atkinson Drive
Bridgewater, Ma 02324
(508) 697-7528

Dated: July 17, 1991

§ 205 of the Civil Relief Act is superseded and limited for the purposes of this case by the more specific tolling provision of § 10(b) of the NLRA. The court finds that § 10(b) is intended to govern where, as here, a collective bargaining agreement is implicated.

For over 70 years the present § 205 and its predecessors have protected American servicemen from the running of statutes of limitations and periods of adverse possession while they were engaged in the business of defending their country. Section 205 was originally enacted as § 205 of P.L. 103, 40 Stat. 440 (1918). This law was essentially reenacted as the Civil Relief Act of 1940, 50 U.S.C. App. § 501, et seq., which was extended indefinitely by the Universal Military Training and Service Act of 1948, 50 U.S.C. App. § 464.

The language and history of the Civil Relief Act indicate that it "must be read with an eye friendly to those who dropped their affairs to answer their country's call." LeMaistre v. Leffers, 333 U.S. 1, 6 (1948). As stated in 1940:

> In order to provide, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation....

50 U.S.C. App. § 501 (emphasis added). Each of the provisions of the Civil Relief Act are directed at allowing the serviceman to concentrate fully and freely on his military duty, without the

distraction of having to enforce his legal rights within a set limitations period or defend himself in administrative or judicial proceedings during the time of his active duty.

The NLRA, on the other hand, was originally passed in 1935, and addressed the strong federal interest in just and efficient treatment of labor disputes. To this end, § 10(b) of the NLRA "established a limitations period attuned to what [Congress] viewed as the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective-bargaining system." United Parcel Service, Inc. v. Mitchell, 451 U.S. 56, 73 (1981). As part of this, § 10(b) also directly addressed, in the limited context of labor disputes, the same concern underlying the policy expressed earlier and more generally by § 205 -- the possible prejudice to servicemen resulting from their active military duty.

Section 10(b) resolved the competing, compelling interests of a strong national defense and the desire for repose in labor relations by allowing a serviceman's active duty to toll otherwise applicable limitations periods, but only if his service prevented him from filing suit within the set limitations period. It was just such prejudice that this court and the Court of Appeals found lacking in the present case.

A statute may, of course, be modified by subsequent legislation. Although Congress and the President did not expressly amend § 205 of the Civil Relief Act when § 10(b) of the NLRA was

passed, their intent to do so is evident. Both § 205 and § 10(b) speak directly to the same concerns regarding a serviceman's rights regarding litigation and they both reflect a special solicitude for military personnel. Like § 205, § 10(b) recognizes that a special rule is appropriate to protect individuals whose military service may affect the conduct of their civilian legal affairs. However, the NLRA, which was passed after the initial enactment of § 205, also took into account the important national interest in the maintenance of peaceful and certain labor relations. In § 10, Congress and the President struck a particular balance between their perception of the important, legitimate interests of servicemen and the also important, legitimate interests of the collective bargaining system. Thus, rather than the blanket exemption from limitations periods generally created by § 205, § 10(b) requires a showing of actual prejudice in the context of labor disputes before allowing such disputes to remain actionable in a legal proceeding beyond a six month period of time.

It is axiomatic that a more specific statute will take precedence over a more general one, where they address the same subject and their operations cannot be reconciled. This principle has been recognized frequently by the Supreme Court and other courts. For example, in Morton v. Mancari, the Court wrote, "Where there is no clear intention otherwise, a specific statute will not be controlled by a general one, regardless of the priority of enactment." 417 U.S. 535, 550-51 (1974); see also Busic v. United States, 446 U.S. 398, 406 (1980) (where overlapping criminal

sentencing provisions exist, court will follow "the principle that a more specific statute will be given precedence over a more general one, regardless of their temporal sequence"); United States v. Sadler, 649 F.Supp. 1560, 1564 (D.Mass. 1986) (same).

This general rule of construction is particularly appropriate where, as here, the specific provision was enacted after the general law. Congress and the President are presumed to legislate with the knowledge, and in the context, of existing laws. See Goodyear Atomic Corp. v. Miller, 486 U.S. 174, 184-85 (1988). Thus, the intent to amend § 205 to require a showing of actual prejudice in the context of collective bargaining claims is implicit in the enactment of § 10(b). This inference is particularly appropriate in this case. Section 10(b)'s conditional tolling provision would be rendered meaningless if § 205's automatic tolling of limitations periods remained applicable in the context of labor disputes. This court does not believe that Congress and the President intended the terms of § 10(b) to be without effect.

The fact that § 205 was re-enacted in 1940 does not alter this conclusion. Rather, the court infers that if Congress and the President intended to alter the careful balance they struck in § 10(b), they would have done so explicitly. Morton, 417 U.S. at 550-51; Busic, 446 U.S. at 406.

While this court recognizes that there is a public policy, reflected in both § 205 and § 10(b), of being solicitous to servicemen, this is not the only public policy implicated in this

case. Generally, statutes of limitations are "vital to the welfare of society . . . They promote repose by giving security and stability to human affairs." Wood v. Carpenter, 101 U.S. 135, 139 (1979); see also Kay v. Johnson & Johnson, 722 F. Supp. 874, 879 (D.Mass. 1989), aff'd, 902 F.2d 1 (1st Cir. 1990). Section 10(b) reflects the determination that such stability and security are particularly important in the context of collective bargaining agreements. Yet in enacting § 10(b) Congress and the President remained sensitive to the fact that special protection for servicemen is necessary and appropriate even when a collective bargaining agreement is involved. The specific exception for servicemen included in § 10 reflects the perception of Congress and the President concerning the proper balance to be struck between competing, valid aspects of the public interest. This court must effectuate that decision.

Thus, the court finds that § 10(b) of the NLRA, rather than § 205 of the Civil Relief Act, is applicable in this case. Thus, for the reasons described previously by this court and the Court of Appeals, plaintiff's present claim is time-barred.

III. ORDER

In view of the foregoing, defendants motion for summary judgment is again hereby ALLOWED.

UNITED STATES DISTRICT JUDGE

[NOT FOR PUBLICATION] Mouradian Esq

United States Court of Appeals
For the First Circuit

No. 88-2072

RAYMOND R. MOURADIAN,

Plaintiff, Appellant,

v.

THE JOHN HANCOCK COMPANIES, ET AL.,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Mark L. Wolf, U.S. District Judge]

Before

Campbell, Chief Judge,
Breyer and Selya, Circuit Judges.

Raymond R. Mouradian on brief pro se.

Charles I. Cohen, Gregory W. Homer, Vedder, Price, Kaufman, Kammholz & Day, Joseph F. Ryan, and Lyne, Woodworth & Evarts on brief for appellees The John Hancock Mutual Life Insurance Company, et al.

Richard Roesel, Assistant General Counsel, United Food & Commercial Workers International Union, Warren H. Pyle, and Angoff, Goldman, Manning, Pyle, Wanger & Hiatt, P.C. on brief for the Union appellees.

David J. Hart on brief for appellees Middlesex Insurance Company, Sentry Insurance Company and Frank Ballard.

Entered: May 26, 1989

Per Curiam. Plaintiff-appellant, appearing pro se, has appealed the district court's judgment of dismissal. We have reviewed plaintiff's filings and briefs with care. We will not discuss each of plaintiff's arguments, for we feel that the district court's opinion, with which we agree, adequately explains the deficiencies in plaintiff's lawsuit. Instead, we limit our discussion to what we view as the central question.

The principal question is whether plaintiff's action was barred by the applicable six-month limitations period. Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983) (six-month statute of limitation governs employee's action against employer and union alleging breach of collective bargaining agreement and breach of duty of fair representation). Plaintiff's action was filed a few days outside the six-month limit. Plaintiff says, however, that the six months should be tolled by the weekends and a two-week period he spent on what the district court accepted to be "active duty" in the Naval Reserves. Below, plaintiff's argument for tolling focused on language in 29 U.S.C. § 160(b) which extends the six-month limit if "the person aggrieved... was prevented from filing such charge by reason of service in the armed forces...." The district court concluded that plaintiff's intermittent service did not "prevent" him from

filing his lawsuit. We agree with the district court's analysis and do not repeat it here.

Now, on appeal, plaintiff appears to be adding a new tolling argument, for he cites to the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 525. This provides, in pertinent part, as follows:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service... whether such cause of action or the right or privilege to institute such action or proceeding shall have occurred prior to or during the period of such service....

We see no indication that plaintiff ever raised § 525 below. The general rule is that a litigant may not raise a new issue for the first time on appeal. See Jaroma v. Massey, No. 88-1629, slip op. at 12 (1st Cir. April 28, 1989) (pro se plaintiff cannot raise a new matter for the first time on appeal). Only where a new argument is "'so compelling as virtually to insure appellant's success'" do we depart from this general rule. Johnston v. Holiday Inns, Inc., 595 F.2d 890, 894 (1st Cir. 1979) (quoting Dobb v. Baker, 505 F.2d 1041, 1044 (1st Cir. 1974)). Not only, however, did plaintiff fail

to raise § 525 below, there is nothing in his appellate brief rising to the level of argument on the matter. Appellant, in his main brief, merely cites to the statute without any elaboration or explanation. See United States v. McNatt, 842 F.2d 564, 567 (1st Cir. 1988) (one-sentence explanation of the basis for appeal is insufficient to raise an issue). Not until his reply brief did he have anything rising to their level of discussion. See Wells Real Estate, Inc v. Greater Lowell Board of Realtors, 850 F.2d 803 (1st Cir.), cert. denied, 57 U.S.L.W. 3347 (1988) (argument waived when raised for the first time in reply brief). None of the defendants' briefs have responded to plaintiff's citation to the Soldiers' and Sailors' Civil Relief Act and, as we have indicated, plaintiff did not develop the matter in his main brief.

The question then is whether, in view of the briefing deficiencies, we should nevertheless address the applicability of § 525 to plaintiff's action. We note that it seems clear that were plaintiff a member of a regular military unit, he would be protected by the Act. Bickford v. United States, 656 F.2d 636 (Ct. Cl. 1981) (50 U.S.C. App. § 525 tolled running of statute of limitations during period of service in the Army); Ricard v. Birch, 529 F.2d 214 (4th Cir. 1975) (period of limitations tolled during period of defendant's service in the Marine Corps); Lester v. United States, 487 F.Supp. 1033 (N.D. Tex. 1980) (statute of limitations tolled during period

of service in the Navy). Plaintiff, however, was a reservist. Nevertheless, what little case law we have been able to find would appear to support tolling during the period plaintiff was on active duty even as a reservist, and thus his lawsuit may well be timely. For example, in Stephan v. United States, 490 F.Supp. 323, 325 (W.D. Mich. 1980), the court stated that "[t]he applicability of the [Soldiers' and Sailors' Civil Relief Act] to reservists in the military is clear" and concluded that the two years for filing an administrative claim in a federal tort claims action had been tolled by an eight-month period plaintiff had spent in the Air Force reserves, apparently on sick leave due to a serious accident he had suffered on a military reservation. See also Bowles v. Dixie Cab Co., 112 F.Supp. 324, 326 (E.D.C. 1953) (statute of limitations tolled by fifteen months defendant spent on active duty in the Organized Naval Reserves). But see T.Folk, Tolling of Statutes of Limitations Under Section 205 of the Soldiers' and Sailors' Civil Relief Act, 102 Mil.L.Rev. 157 (1983) (arguing that Congress did not intend that limitations periods be tolled for prolonged periods when military service did not interfere with the ability to prosecute claims and urging remedial legislation to change how § 205 has been applied).

The Soldiers' and Sailors' Civil Relief Act is remedial legislation, enacted for the benefit of persons in military service "to enable such persons to devote their entire

energy to the defense needs of the Nation...." 50 U.S.C. App. § 510. Plaintiff's lawsuit was but a few days outside the six-month period, and plaintiff did refer below to his status as a serviceman on active duty (albeit, he did not then point to the right statute). In these circumstances, we do not feel we can ignore § 525. Rather, we are guided by the procedural course of Ricard v. Birch, 529 F.2d 214, 216 (4th Cir. 1975). There, even though § 525 was invoked for the first time on appeal, the court nevertheless concluded that § 525's clear terms should not be disregarded and applied the statute. Accordingly, we think the fairer disposition is to vacate the judgment below and to remand to the district court for further consideration of whether plaintiff's action was time-barred. As we have not had the benefit of briefing from defendants concerning the applicability of the Soldiers' and Sailors' Civil Relief Act, we should not be understood as having made a definitive ruling that the statute applies. Rather, we leave the matter for further development below.

Appellees' motion to dismiss the appeal or to strike nonconforming pleadings is denied.

Vacated and remanded.

Supreme Court, U.S.
FILED
JUL 19 1991
OFFICE OF THE CLERK

No. 91-1159

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

RAYMOND R. MOURADIAN, Petitioner,

v.

THE JOHN HANCOCK COMPANIES, et al, Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Pro Se Petitioner

July 19, 1991

the 3+ additional copies of the Petition of Certiorari if my status as a veteran is acceptable. Thank you.

Very truly yours,

Raymond R. Mouradian

Raymond R. Mouradian
Petitioner, Pro Se

RRM/lpm

w/enclosures: Motion to Proceed on typewritten pages
Certificate of Service
Affidavit of Military Service
Copy of DD-214 (honorable discharge)
Copy of Petition of Certiorari

cc to: Charles I. Cohen, Esq.
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Raymond R. Mouradian
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January 9, 1992

Francis J. Lorson
Chief Deputy Clerk
United States Supreme Court
Washington D.C. 20543

91-1159

Re: Raymond R. Mouradian v. The John Hancock Companies, et al..

Dear Mr. Lorson:

1. In response to our telephone conversation of January 3, 1992 and pursuant to S.ct. Rule 22, I have submitted the enclosed motion to proceed upon typewritten pages to Justice Souter for his review and approval.

2. Pursuant to S.ct. Rule 12.3 petitioner moves that the Supreme Court void as out of time any briefs in opposition to my Petition for Certiorai by the respondents that was submitted on July 19, 1991 and received by the court on July 22, 1991. No brief in opposition has been received by the Petitioner no more than 30 days after submission of my petition for a Writ of Certiorari as required by Rule 12.3.

I am returning one copy of my Petition for a Writ of Certiorari for the courts convenience and review if my motion to proceed upon typewritten pages is allowed. I hope that the court will accept my petition in its original condition only because I would be gaining an unfair advantage over the respondents since they did not chose to cross-petition within 30 days as is required under S.ct. Rule 12.3. I shall return

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached document was mailed postage pre-paid to the attorneys of record listed below on January 10, 1992.

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Supreme Court, U.S.
FILED
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No. 91-1159

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

RAYMOND R. MOURADIAN,
Petitioner,
v.
THE JOHN HANCOCK COMPANIES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

JOINT BRIEF IN OPPOSITION OF RESPONDENTS JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, *ET AL.* AND SENTRY INSURANCE A MUTUAL COMPANY, *ET AL.*

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QUESTION PRESENTED

Did the Court of Appeals properly conclude that "hybrid" Section 301/duty of fair representation claims under the Labor-Management Relations Act are governed by the military service tolling provision in Section 10(b) of the LMRA, rather than by the military service tolling provision in Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940?

RULE 29.1 STATEMENT

Respondents John Hancock Mutual Life Insurance Company, *et al.*, have the following parent companies, affiliates and subsidiaries other than wholly-owned subsidiaries:

John Hancock Servicos Internacionais S/C Limitade (Brazil)
John Hancock International Services, S.A. (Belgium)
John Hancock International Services (Hong Kong) Limited
P.T. Asuransi Pensiun Bumiputera John Hancock (Indonesia)
British American Life & General Insurance Berhad (Malaysia)
British American Life Assurance Pte. Ltd. (Singapore)
The Interlife Assurance Company, Ltd. (Thailand)
John Hancock International Services Pte. Ltd. (Singapore)
Energy Investors Management, Inc.
John Hancock Advisers International, Ltd. (England)
First Signature Bank & Trust Company
Hancock Int'l. Private Equity Management, Ltd. (England)
JHM Capital Corporation
Capital Growth (Bermuda) Management Co., Ltd.
The Maritime Life Assurance Company (Canada)
Nahama & Weagant Energy Company
Dallas Gas & Electric, Inc.
Gulf States Gas Pipeline Company
National Electronic Information Corporation
Polaris Petroleums, Ltd. (Canada)
International Human Resources Development Corporation
Hotel Property Holdings, Inc.

Respondent Sentry Insurance A Mutual Company is a parent company comprised of 17 wholly-owned subsidiaries. One of those subsidiaries, Middlesex Insurance Company, is also a named defendant in this action.

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MISCELLANEOUS

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IN THE

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OCTOBER TERM, 1991

No. 91-1159

RAYMOND R. MOURADIAN,
Petitioner,

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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JOINT BRIEF IN OPPOSITION OF RESPONDENTS JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, *ET AL.* AND SENTRY INSURANCE A MUTUAL COMPANY, *ET AL.*

STATEMENT OF THE CASE

Petitioner brought this action in 1986 alleging, *inter alia*, that Respondent John Hancock Mutual Life Insurance Company ("John Hancock") had terminated him in violation of his collective bargaining agreement and that his union, the United Food and Commercial Workers International Union, had breached its duty of fair representation by refusing to submit his discharge grievance to arbitration. Petitioner alleged that Respondent Sentry Insurance a Mutual Company ("Sentry") wrongfully participated in his termination of employment.[1] Recog-

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[1] Petitioner's complaint named numerous defendants, all of whom are listed at page ii of the Petition for Certiorari. This Joint Brief

nizing that Petitioner's allegations amounted to a "hybrid" Section 301/duty of fair representation claim under the Labor-Management Relations Act ("LMRA"), the district court dismissed Petitioner's claim because Petitioner had not filed his complaint within the six-month statute of limitations prescribed by Section 10(b) of the LMRA, 29 U.S.C. § 160(b), and made applicable to hybrid Section 301 claims by this Court's decision in *DelCostello v. Teamsters*, 462 U.S. 151 (1983).

In reaching this conclusion, the district court rejected Petitioner's contention that Section 10(b)'s six-month limitations period should be tolled because, during the six-month period, Petitioner had served once-a-month weekend duty and one two-week period of sustained duty in the Naval Reserves.[2] The court held that this intermittent Naval Reserve duty had not prevented Petitioner from commencing his lawsuit and, as a consequence, the military tolling provision of Section 10(b) was not activated. See Appendix to the Petition for Certiorari ("Pet. App."), pp. 2c-3c.

Petitioner appealed this dismissal to the First Circuit and there, for the first time, argued that the statute of limitations should be tolled under Section 205 of the Soldiers' and Sailors' Civil Relief Act ("SSCRA"), which Petitioner contended provides for tolling without any showing that his military duty prevented him from filing

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In Opposition is submitted on behalf of John Hancock and its officers and employees who are named party defendants to this action and on behalf of Sentry and its subsidiaries, officers, and employees who are named party defendants.

[2] Section 10(b) of the LMRA provides in relevant part:

> [N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such a charge by reason of service in the armed forces, in which event the six-month period shall be computed from the date of his discharge.

a complaint.[3] See Pet. App. 2c-3c. Because this contention was first raised in Petitioner's reply brief to the First Circuit, the appellate court remanded the case to the district court for consideration of this issue.

On remand, the district court reaffirmed its earlier conclusion that Section 10(b)'s military tolling provision controlled Petitioner's claim and that the requisites for such tolling had not been met. While "assuming" that SSCRA Section 205 would be applicable to military reservists such as Petitioner (Pet. App. 4b), the district court reasoned that the military tolling provision in Section 10(b) superseded the SSCRA provision because: (1) unlike the SSCRA, Section 10(b) specifically "resolved the competing, compelling interests of a strong national defense and the desire for repose in labor relations by allowing a serviceman's duty to toll otherwise applicable limitations periods, but only if his service prevented him from filing suit within the set limitations period" (Pet. App. 7b); and (2) under settled rules of statutory construction, a more specific statute should take precedence over a general one, particularly where the specific provision was enacted after the general law. Pet. App. 8b-9b.

Petitioner appealed a second time to the First Circuit. In its decision which is the subject of the certiorari petition now before this Court, the First Circuit agreed that the district court's analysis would compel application of Section 10(b) in any case in which Section 10(b) was to be applied directly. Pet. App. 3a. However, the appellate

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[3] Section 205 of SSCRA, 50 U.S.C. Appx. § 525, provides in relevant part:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court . . . by or against any person in the military service . . . whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service . . . .

court found it necessary also to consider whether the same result would obtain in a situation where, as here, the Section 10(b) statute of limitations is a "borrowed" provision to fill the interstices of federal law. Pet. App. 3a-4a. After examining this Court's decisions relating to the importation of tolling provisions along with borrowed statutes of limitations as well as this Court's rationale for utilizing the Section 10(b) period in hybrid Section 301 actions, the First Circuit concluded that the Section 10(b) tolling provisions should control Petitioner's claim. Pet. App. 5a-8a.

REASONS FOR DENYING THE WRIT

Petitioner has offered no colorable reason, much less a persuasive one, why this Court should grant a writ of certiorari in the instant case. See Rule 10 of the Rules of the Supreme Court of the United States.

First, Petitioner has not contended that the First Circuit's judgment is in conflict with the decision of any other circuit or state court of last resort. Rule 10(a). Nor has Petitioner contended that there is a conflict on this federal question among state courts of last resort. Rule 10(b). In fact, so far as we are aware, there is no other reported case dealing with the interaction of LMRA Section 10(b) and SSCRA Section 205 in hybrid Section 301 suits.

Second, Petitioner cannot legitimately contend that the First Circuit has decided a federal question that is sufficiently important to warrant this Court's intervention. Rule 10(c). Indeed, the fact that there apparently have been no other cases involving this issue during the 42 year coexistence of LMRA Section 10(b) and SSCRA Section 205 suggests that this case is somewhat of an anomaly and that it certainly does not present the kind of pervasive, important, and recurring issue that might justify resolution by this Court.

Third, Petitioner has not even suggested that the First Circuit decided this case in a way that conflicts with this

Court's decisions. On the contray, Petitioner has argued only that *DelCostello v. Teamsters*, *supra*, was wrongly decided and that this Court should have adopted a rule providing that hybrid Section 301 actions would be governed by state statutes of limitations or by the limitations provision in the Federal Arbitration Act, 9 U.S.C. § 9. Pet., pp. 3-4.

Finally, the First Circuit's judgment does not, in fact, conflict with this Court's decisions, but rather, is substantially compelled by them. As the First Circuit's discussion of the precedent makes clear (Pet. App. 4a-8a), this Court has recognized that tolling provisions in a statute of limitations bear a unique and important relationship with the length of the limitations period, and that such tolling provisions in a "borrowed" statute of limitations should normally be imported along with the limitations period being borrowed. See, e.g., *Hardin v. Straub*, 490 U.S. 536, 543-44 (1989) (federal court borrowing state statute of limitations in 42 U.S.C. § 1983 action must also apply tolling provisions of the state statute); *West v. Conrail*, 481 U.S. 35, 39 n.6 (1987) (distinguishing the adoption of tolling rules along with a borrowed statute from the adoption of other provisions of the borrowed statute); *Board of Regents v. Tomanio*, 446 U.S. 478, 491-92 (1980) (lower court erred by adopting a "federal tolling rule" that was not contained in the tolling provisions of the state statute of limitaions being borrowed); and *Johnson v. Railway Express Agency*, 421 U.S. 454, 463-65 (1975) (rejecting contention that a federal tolling rule should be superimposed on the tolling provisions of the state statute of limitations being borrowed for actions under 42 U.S.C. § 1981).

This Court's decision in *Johnson v. Railway Express* perhaps best describes why the "borrowing" of statutes of limitations logically includes the rules of tolling contained in those statutes. The Court stated:

> Any period of limitation, . . . is understood fully only in the context of the various circumstances that suspend it from running against a particular cause of action. Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones. In virtually all statutes of limitations the chronological length of the limitations period is interrelated with provisions regarding tolling, revival, and questions of application. In borrowing a state period of limitation for application to a federal cause of action, a federal court is relying on the State's wisdom in setting a limit, and exceptions thereto, on the prosecution of a closely analogous claim.

421 U.S. at 463-64.

This rationale is even more pertinent here, where Congress itself, not a state, has balanced the competing interests and prescribed a particular tolling rule for matters relating to labor relations. As this Court emphasized in *DelCostello v. Teamsters*:

> "In § 10(b) of the NLRA, Congress established a limitations period attuned to what it viewed as the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective-bargaining system."

462 U.S. at 171, quoting Justice Stewart's concurring opinion in *United Parcel Service v. Mitchell*, 451 U.S. 56, 70 (1981). Also part of that balance, obviously, was Congress' view of when the "national interests in stable bargaining relationships and finality of private settlements" should give way to employee and national defense interests for individuals serving in the armed forces. *Id.* Congress resolved that issue by enacting the

military tolling provision in Section 10(b), and the First Circuit adhered to that resolution by applying the Section 10(b) military tolling provision in this case. Accordingly, its decision should not be disturbed.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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